IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7262 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVIN BHUPENDRABHAI GANDHI & 2 - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PR ABICHANDANI for Applicant(s) : 1 - 3.
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR PS CHAMPANERI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2007

ORAL JUDGMENT

1. Present application has been filed by the petitioners – original accused Nos. 1,2 and 3 under

Section 482 of the Criminal Procedure Code for quashing and setting aside the complaint being C.R.No. 281/05 registered with Vejalpur Police Station, Ahmedabad and also to quash any other further proceedings in pursuance thereto conducted and/or submitted by the Investigating Officer.

2. Respondent No.2 herein – original complainant has filed Criminal complaint being C.R.N. 281/05 with Vejalpur Police Station, Ahmedabad against the petitioners for the offences punishable under Sections 498(A), 341, 114, 406 and 420 of the Indian Penal Code read with Sections 4 and 5 of the Dowry Prohibition Act. Respondent No.2 herein-original complainant is the divorced wife of applicant No.1. As the parties have settled amicably, this Court is not discussing merits of the case in detail.

3. Today when the matter is called out, learned Advocate appearing on behalf of the respective parties have produced on record 'Memorandum of Understanding and Pursis of Full and Final over all Settlement' signed by the petitioner No.1 herein and

respondent No.2 – original complainant whereby it is agreed between the parties that the petitioner will pay an amount of Rs.3,75,000/- (Rupees Three lac Seventy Five Thousand only) to respondent No.2 – original complainant by way of alimony / maintaence and that the parties have also agreed to withdraw First Appeal No. 3349 of 2005 and Civil Application No. 11193 of 2005 in First Appeal No. 3349 of 2005 whereby the decree passed by the Family Court, Ahmedabad is challenged and it has been decided that the decree of divorce will be treated as final and binding to both the parties. It is also agreed between the parties by way of 'Memorandum of Understanding' that the proceedings for maintenance instituted by the complainant in the Court of J.M.F.C., Surendranagar will be withdrawn unconditionally and on payment of Rs.3.75 lacs by applicant No.1 to respondent No.2 that there shall not be future claims by the complainant. It is also agreed between the parties that C.R.No. 281 of 2005 lodged at Vejalpur Police Station be also not proceeded further in view of overall settlement of dispute between the parties. Said 'Memorandum of

Understanding' is directed to be taken on record.

4. Learned Advocates appearing on behalf of the respective parties have jointly submitted that in view of overall settlement between the parties, it is requested to quash the impugned complaint in exercise of powers under Section 482 of the Criminal Procedure Code as in view of the complaint by respondent No.2 – original complainant there are blink chances of conviction and to continue with the criminal proceedings against the petitioners, it will not be in the interest of the respective parties.

The learned Advocates appearing on behalf of the parties have relied upon the decision of the Hon'ble Supreme Court in the case of ***B.S.Joshi & Ors. V/s.State of Haryana & Anr.*** reported in *2003 (3) SCALE 214* in support of their submission to exercise powers under Section 482 of the Criminal Procedure Code considering the fact that there are blink chances of conviction of the petitioners.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. On considering overall facts and circumstances of the case and the stand of respondent No.2 – original complainant and the settlement arrived at between the parties more particularly, 'Memorandum of Understanding', it appears to the Court that now there are blink chances of conviction of the petitioners. Even if trial is to take place in view of the stand taken by respondent No.2 – original complainant she might not support the complaint, therefore, there are blink chances of conviction of the petitioners. Under the circumstances, this is a fit case to exercise powers under Section 482 of the Criminal Procedure Code and to quash and set aside the complaint in view of the subsequent development and in the peculiar facts and circumstances of the case. This Court is of the opinion that in view of the subsequent stand taken by respondent No.2 and the settlement arrived at between the parties there are blink chances of conviction of the petitioner – original accused at the time of trial and under the circumstances, it will not be in the interest of the parties to continue criminal proceedings.

7. For the reasons stated above, the petition

succeeds and the impugned complaint being being C.R.No. 281/05 registered with Vejalpur Police Station, Ahmedabad and further proceedings of the Investigating Officer to the said complaint is quashed and set aside. Rule is made absolute to the aforesaid extent accordingly.

[M.R.Shah, J.]

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